

AMENDED IN SENATE AUGUST 8, 2016

AMENDED IN ASSEMBLY APRIL 7, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2566

Introduced by Assembly Member Nazarian

February 19, 2016

An act to amend Section 1185 of the Civil Code, relating to property.

LEGISLATIVE COUNSEL'S DIGEST

AB 2566, as amended, Nazarian. Notaries public: acceptance of identification.

Existing law relating to property transfers prohibits the acknowledgment of an instrument unless the officer taking it has satisfactory evidence that the person making the acknowledgment is the individual who is described in and who executed the instrument. Existing law provides that an officer may reasonably rely on, among other things, a passport issued by a foreign government, a driver's license issued by another state or a Canadian or Mexican public agency, an identification card issued by another state or a branch of the Armed Forces of the United States, or an employee identification card issued by an agency or office of this state or a city, county, or city and county in this state, provided that the document meets certain requirements. In the event the document is a passport, it must be stamped by the United States Citizenship and Immigration Services of the Department of Homeland Security.

This bill, instead of that provision pertaining to a passport issued by a foreign government, would authorize the acceptance of a valid passport from the applicant's ~~county~~ *country* of citizenship, or a valid consular

identification document issued by a consulate from the applicant's country of citizenship, as proof of identity. The bill would eliminate the requirement that the passport be stamped by the United States Citizenship and Immigration Services of the Department of Homeland Security.

This bill would incorporate additional changes to Section 1185 of the Civil Code proposed by SB 997 that would become operative if this bill and SB 997 are enacted and this bill is enacted last.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1185 of the Civil Code is amended to
2 read:
3 1185. (a) The acknowledgment of an instrument shall not be
4 taken unless the officer taking it has satisfactory evidence that the
5 person making the acknowledgment is the individual who is
6 described in and who executed the instrument.
7 (b) For purposes of this section, "satisfactory evidence" means
8 the absence of information, evidence, or other circumstances that
9 would lead a reasonable person to believe that the person making
10 the acknowledgment is not the individual he or she claims to be
11 and any one of the following:
12 (1) (A) The oath or affirmation of a credible witness personally
13 known to the officer, whose identity is proven to the officer upon
14 presentation of a document satisfying the requirements of paragraph
15 (3) or (4), that the person making the acknowledgment is personally
16 known to the witness and that each of the following are true:
17 (i) The person making the acknowledgment is the person named
18 in the document.
19 (ii) The person making the acknowledgment is personally known
20 to the witness.
21 (iii) That it is the reasonable belief of the witness that the
22 circumstances of the person making the acknowledgment are such
23 that it would be very difficult or impossible for that person to
24 obtain another form of identification.
25 (iv) The person making the acknowledgment does not possess
26 any of the identification documents named in paragraphs (3) and
27 (4).

1 (v) The witness does not have a financial interest in the
2 document being acknowledged and is not named in the document.

3 (B) A notary public who violates this section by failing to obtain
4 the satisfactory evidence required by subparagraph (A) shall be
5 subject to a civil penalty not exceeding ten thousand dollars
6 (\$10,000). An action to impose this civil penalty may be brought
7 by the Secretary of State in an administrative proceeding or a public
8 prosecutor in superior court, and shall be enforced as a civil
9 judgment. A public prosecutor shall inform the secretary of any
10 civil penalty imposed under this subparagraph.

11 (2) The oath or affirmation under penalty of perjury of two
12 credible witnesses, whose identities are proven to the officer upon
13 the presentation of a document satisfying the requirements of
14 paragraph (3) or (4), that each statement in paragraph (1) is true.

15 (3) Reasonable reliance on the presentation to the officer of any
16 one of the following, if the document or other form of identification
17 is current or has been issued within five years:

18 (A) An identification card or driver's license issued by the
19 Department of Motor Vehicles.

20 (B) A passport issued by the Department of State of the United
21 States.

22 (C) An inmate identification card issued by the Department of
23 Corrections and Rehabilitation, if the inmate is in custody in prison.

24 (D) Any form of inmate identification issued by a sheriff's
25 department, if the inmate is in custody in a local detention facility.

26 (4) Reasonable reliance on the presentation of any one of the
27 following, provided that a document specified in subparagraphs
28 (A) to (E), inclusive, shall either be current or have been issued
29 within five years and shall contain a photograph and description
30 of the person named on it, shall be signed by the person, and shall
31 bear a serial or other identifying number:

32 (A) A valid consular identification document issued by a
33 consulate from the applicant's ~~county~~ country of citizenship, or a
34 valid passport from the applicant's country of citizenship.

35 (B) A driver's license issued by a state other than California or
36 by a Canadian or Mexican public agency authorized to issue
37 driver's licenses.

38 (C) An identification card issued by a state other than California.

39 (D) An identification card issued by any branch of the Armed
40 Forces of the United States.

1 (E) An employee identification card issued by an agency or
2 office of the State of California, or by an agency or office of a city,
3 county, or city and county in this state.

4 (c) An officer who has taken an acknowledgment pursuant to
5 this section shall be presumed to have operated in accordance with
6 the provisions of law.

7 (d) A party who files an action for damages based on the failure
8 of the officer to establish the proper identity of the person making
9 the acknowledgment shall have the burden of proof in establishing
10 the negligence or misconduct of the officer.

11 (e) A person convicted of perjury under this section shall forfeit
12 any financial interest in the document.

13 *SEC. 1.5. Section 1185 of the Civil Code is amended to read:*

14 1185. (a) The acknowledgment of an instrument shall not be
15 taken unless the officer taking it has satisfactory evidence that the
16 person making the acknowledgment is the individual who is
17 described in and who executed the instrument.

18 (b) For purposes of this section, “satisfactory evidence” means
19 the absence of information, evidence, or other circumstances that
20 would lead a reasonable person to believe that the person making
21 the acknowledgment is not the individual he or she claims to be
22 and any one of the following:

23 (1) (A) The oath or affirmation of a credible witness personally
24 known to the officer, whose identity is proven to the officer upon
25 presentation of a document satisfying the requirements of paragraph
26 (3) or (4), that the person making the acknowledgment is personally
27 known to the witness and that each of the following are true:

28 (i) The person making the acknowledgment is the person named
29 in the document.

30 (ii) The person making the acknowledgment is personally known
31 to the witness.

32 (iii) That it is the reasonable belief of the witness that the
33 circumstances of the person making the acknowledgment are such
34 that it would be very difficult or impossible for that person to
35 obtain another form of identification.

36 (iv) The person making the acknowledgment does not possess
37 any of the identification documents named in paragraphs (3) and
38 (4).

39 (v) The witness does not have a financial interest in the
40 document being acknowledged and is not named in the document.

1 (B) A notary public who violates this section by failing to obtain
2 the satisfactory evidence required by subparagraph (A) shall be
3 subject to a civil penalty not exceeding ten thousand dollars
4 (\$10,000). An action to impose this civil penalty may be brought
5 by the Secretary of State in an administrative proceeding or a public
6 prosecutor in superior court, and shall be enforced as a civil
7 judgment. A public prosecutor shall inform the secretary of any
8 civil penalty imposed under this subparagraph.

9 (2) The oath or affirmation under penalty of perjury of two
10 credible witnesses, whose identities are proven to the officer upon
11 the presentation of a document satisfying the requirements of
12 paragraph (3) or (4), that each statement in paragraph (1) is true.

13 (3) Reasonable reliance on the presentation to the officer of any
14 one of the following, if the document or other form of identification
15 is current or has been issued within five years:

16 (A) An identification card or driver's license issued by the
17 Department of Motor Vehicles.

18 (B) A passport issued by the Department of State of the United
19 States.

20 (C) An inmate identification card issued by the Department of
21 Corrections and Rehabilitation, if the inmate is in custody in prison.

22 (D) Any form of inmate identification issued by a sheriff's
23 department, if the inmate is in custody in a local detention facility.

24 (4) Reasonable reliance on the presentation of any one of the
25 following, provided that a document specified in subparagraphs
26 (A) to ~~(E)~~, (F), inclusive, shall either be current or have been issued
27 within five years and shall contain a photograph and description
28 of the person named on it, shall be signed by the person, *and* shall
29 bear a serial or other identifying number, ~~and, in the event that the~~
30 ~~document is a passport, shall have been stamped by the United~~
31 ~~States Citizenship and Immigration Services of the Department of~~
32 ~~Homeland Security:~~ *number:*

33 (A) ~~A passport valid consular identification document issued~~
34 ~~by a foreign government: consulate from the applicant's country~~
35 ~~of citizenship, or a valid passport from the applicant's country of~~
36 ~~citizenship.~~

37 (B) A driver's license issued by a state other than California or
38 by a Canadian or Mexican public agency authorized to issue
39 driver's licenses.

40 (C) An identification card issued by a state other than California.

1 (D) An identification card issued by any branch of the Armed
2 Forces of the United States.

3 (E) An employee identification card issued by an agency or
4 office of the State of California, or by an agency or office of a city,
5 county, or city and county in this state.

6 (F) *An identification card issued by a federally recognized tribal*
7 *government.*

8 (c) An officer who has taken an acknowledgment pursuant to
9 this section shall be presumed to have operated in accordance with
10 the provisions of law.

11 (d) A party who files an action for damages based on the failure
12 of the officer to establish the proper identity of the person making
13 the acknowledgment shall have the burden of proof in establishing
14 the negligence or misconduct of the officer.

15 (e) A person convicted of perjury under this section shall forfeit
16 any financial interest in the document.

17 *SEC. 2. Section 1.5 of this bill incorporates amendments to*
18 *Section 1185 of the Civil Code proposed by both this bill and*
19 *Senate Bill 997. It shall only become operative if (1) both bills are*
20 *enacted and become effective on or before January 1, 2017, (2)*
21 *each bill amends Section 1185 of the Civil Code, and (3) this bill*
22 *is enacted after Senate Bill 997, in which case Section 1 of this*
23 *bill shall not become operative.*